

In the United States Bankruptcy Court
for the

Southern District of Georgia at 11 O'clock & 01 min. AM
Savannah Division

FILED

Date 4/18/95
MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia *JB*

In the matter of:

JAMES CECIL FULLWOOD, JR.

Debtor

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Chapter 13 Case

Number 94-40005

MEMORANDUM AND ORDER
ON MOTION TO ALLOW FILING AND PAYMENT
OF PROOF OF CLAIM

This matter comes before the Court on Centerbank Mortgage Company's Motion to Allow Filing and Payment of Proof of Claim. For the reasons set forth below, the Motion will be denied.

FINDINGS OF FACT

Debtor filed a petition under Chapter 13 of the Bankruptcy Code on January 3, 1994. The Section 341(a) meeting of creditors was held on February 7, 1994. The notice sent by the Clerk of the Court to all creditors set the deadline for filing a proof of claim in Debtor's Chapter 13 case as May 9, 1994.

Movant, Centerbank Mortgage Company, is the holder of a first

priority deed to secure debt on certain real property that serves as the Debtor's residence. At the time Debtor filed his Chapter 13 petition, he was in arrears to Movant on the debt secured by the security deed in the amount of approximately \$18,015.16. Movant failed to file a proof of claim for this pre-petition arrearage within May 9, 1994 deadline. Movant now seeks to have this claimed allowed and paid in Debtor's Chapter 13 case. Both Debtor and the law firm of Miller, Simpson & Tatum, a creditor in Debtor's case, object to the allowance of Movant's late-filed claim.

CONCLUSIONS OF LAW

The question of whether, and under what circumstances, a tardily-filed proof of claim is to be allowed in a Chapter 13 case has been the subject of significant controversy among the courts that have considered it. Many courts have read Rule 3002(c) as a strict bar-date, in the nature of a statute of limitations, requiring the disallowance of any claim, proof of which is tardily filed under the deadlines set for in the Rule.¹ Other courts have looked to section 502(b) of the Bankruptcy Code, which, prior to passage of the Bankruptcy Reform Act of 1994, strongly suggested that, unless one of the eight grounds for objection contained in section 502(b) applied, a proof of claim must be allowed. Thus, because tardiness was not one of the eight grounds listed in section 502(b), these courts concluded that Rule 3002(c), and its

¹ See e.g., In re Friesenhahn, 169 B.R. 615, 23 (Bankr. W.D. Tex. 1994) (collecting cases).

imposition of a strict bar-date, had to yield to the plain language of section 502(b).² The Bankruptcy Reform Act of 1994 has now settled this debate with the addition of a ninth ground in section 502(b) for disallowance of a claim, which provides:

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim as of the date of the filing of the petition, and shall allow such claim in lawful currency of the United States in such amount, except to the extent that--

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide.

This provision thus makes clear that a tardily-filed proof of claim is now a basis for disallowing a claim in a Chapter 13 case. While this provision is not directly applicable to this case because Debtor filed his Chapter 13 petition prior to the Act's effective date, October 22, 1994, this Court believes that the result dictated by section 502(b)(9)

² See e.g., *Id.* (collecting cases); *In re Hausladen*, 146 B.R. 557, 559 (Bankr. D.Minn. 1992). This court has held that the bar-date in Rule 3002(c) does not prevent the allowance of a claim, proof of which is tardily filed, in a Chapter 7 case. See *Matter of Osman*, 164 B.R. 709 (Bankr. S.D.Ga. 1993) (Davis, B.J.).

was the proper result in a Chapter 13 case prior to the provision's enactment.³
Accordingly, Centerbank's Motion must be denied.

ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT
IS THE ORDER OF THIS COURT that Motion to Allow Filing and Payment of
Proof of Claim filed by Centerbank Mortgage Company is DENIED.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 17th day of April, 1995.

³ Accord In re Chavis, 47 F.3d 818, 824 (6th Cir. 1995). See also Osman, 164 B.R. at 712, wherein this Court suggested that the result under Chapter 13 would be different because, unlike Chapter 7, Chapter 13 does not contain a provision dealing with tardily-filed proofs of claim.